Amendments to the Drawings:

The attached replacement drawing sheet makes changes to Fig. 5 and replaces the original sheet with Fig. 5.

Attachment: Replacement Sheet

REMARKS

Claims 1-4 are pending in this application. By this Amendment, claims 1, 3 and 4, and Fig. 5, are amended. The amendments introduce no new matter. Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

The Office Action, on page 2, objects to the drawings indicating that Fig. 5 should be designated with a legend, such as "Prior Art." Fig. 5 is amended to add a legend with the inclusion of the attached replacement drawing sheet. Withdrawal of the objection to the drawings is respectfully requested.

The Office Action, on page 3, objects to claim 1 for an informality. Claim 1 is amended to obviate the objection. Withdrawal of the objection to claim 1 is respectfully requested.

The Office Action, on page 3, rejects claims 1-4 under 35 U.S.C. §112, second paragraph, as being indefinite. Specifically, the Office Action indicates that a feature recited in claim 1 is unclear, and features recited in claims 1 and 4 lack sufficient antecedent basis. Claims 1 and 4 are amended to obviate the rejections.

Accordingly, reconsideration and withdrawal of the rejections of claims 1-4 under 35 U.S.C. §112, second paragraph, are respectfully requested.

The Office Action on page 4, rejects claims 1-3 under 35 U.S.C. §103(a) as being unpatentable over the disclosed prior art depicted in Fig. 5, in view of GB 2 015 951 A (hereinafter "GB '951") and U.S. Patent No. 6,386,528 Thorn et al. (hereinafter "Thorn"). The Office Action, on page 6, rejects claim 4 under 35 U.S.C. §103(a) as being unpatentable over Fig. 5 in view of GB '951 and Thorn as applied to claim 3, and further in view of U.S. Patent Nos. 4,535,863 to Becker and 4,754,827 to Hirabayashi. These rejections are respectfully traversed.

The Office Action asserts that Fig. 5 shows all of the features recited in the claims except tubular spacers or hook rod holding means inside the tubular spacers. The Office Action, on page 5, relies on GB '951 as teaching tubular spacers to establish a predetermined clamping length and clamping force on the holding structure (see Fig. 2, element 5 of GB '951).

The Office Action goes on to allege that Thorn teaches the desirability of providing a structure which has a rod 34 within a tubular member 22 with holding means in the form of O-rings 56 placed inside the tubular member (Fig. 8 and col. 7, lines 41-54). The Office Action concludes that it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Thorn with GB '951 and Fig. 5 of this application in order to achieve the subject matter recited in the claims. This conclusion is incorrect and unsupportable.

MPEP §2141.01(a) states that "in order to rely on a reference as a basis for rejection of an Applicant's invention, the reference must either be in the field of the Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). The MPEP guidance goes on to state that "a reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992).

In considering the problems associated with battery installation in a utility, or other, vehicle, subject matter pertaining to a damper including resilient friction member and a seat assembly using that damper, as is taught by Thorn, would not have logically commended itself to the inventor's attention in considering his problem. The members that are alleged to

correspond to the recited hook rod holding means placed inside the tubular spacers to hold the hooked rods in the tubular spacers are one or more O-rings 56 that are received over the resilient friction member 38 in order to adjust the damping produced in the embodiment depicted in Fig. 8 (col. 7, lines 41-44). Thorn discloses that the O-rings slide against the member 22 when the members 22, 32 move relative to one another. Adding O-rings increases the effective friction area and friction force obtainable from the damper 20 (col. 7, lines 47-50). As such, the O-rings as taught by Thorn, are usable to increase friction already intended and/or present in a damper system, but to allow the respective members 22, 32 to move relative to one another. One of ordinary skill in the art would not have been motivated by Thorn to produce the hook rod holding means to hold stationary the hooks within the tubular spacers as recited in the pending claims.

Additionally, unlike the device of Thorn, in which it is inherent that friction is needed because the device is a damping device, there is no inherent need for friction in the device of Fig. 5. The Applicant discovered an advantage of such a feature, but this advantage was not recognized in the art in the context of a battery holding structure. The alleged motivation to combine is, in effect, the very advantage that the Applicant has discovered, and thus it is clear that the Office Action has impermissibly relied on hindsight knowledge gained from the Applicant's disclosure.

Neither Becker nor Hirabayashi overcomes the above-identified shortfall in the application of Fig. 5 of this application in view of GB '951 and Thorn to render obvious the subject matter of at least independent claim 1. For at least the above reasons, claim 1 is neither anticipated, nor would it have been suggested, by any combination of the applied references. Further, claims 2-4 are neither taught, nor would they have been suggested, by any combination of the applied references for at least the respective dependence of these

claims on independent claim 1, as well as for the separately patentable subject matter which each of these claims recites.

In view of the foregoing, Applicant respectfully submits that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-4 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number set forth below.

Respectfully submitted,

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JAO:DAT/axl

Attachment:
Replacement Drawing Sheet (Fig. 5)

Date: October 6, 2005

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